



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,975	09/10/2003	Peter R. Anderson	1842.041US1	3982
70648 7590 12/28/2009 SCHWEGMAN, LUNDBERG & WOESSNER/WMS GAMING P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER D AGOSTINO, PAUL ANTHONY				
ART UNIT		PAPER NUMBER		
3714				
NOTIFICATION DATE		DELIVERY MODE		
12/28/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
request@slwip.com



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/658,975
Filing Date: September 10, 2003
Appellant(s): ANDERSON ET AL.

Mr. John Fischer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/20/2009 appealing from the Office
action mailed 7/24/2008

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,701,511	Smith	12-1997
6,302,790	Brossard	10-2001
5,588,096	Sato et al.	12-1996

5,734,923	Sagawa et al.	3-1998
2004/0147300	Seelig et al.	7-2004
6,415,303	Meier et al.	7-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 10-12, 14-17, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,701,511 to Smith (Smith) of record in view of U.S. Patent No. 6,302,790 to Brossard (Brossard) of record.

Smith discloses prior art teachings of audio files embedded with timing marks (Figs. 1, 2 and 4) and of other known audio file formats (".wav files" Col. 6 Line 59) stored on CD-ROMs which can be played on a personal computer (Figs. 1 and 2 "personal computer") to activate multi-media works stored on the CD-ROM in sync with the audio (Col. 1 Lines 38-40). Smith also discloses other known audio file formats such as .wav files (".wav files" Col. 5 Lines 14-28). According to Smith, this audio file convention of embedding timing marks is problematic when playing the CD-ROM in a conventional CD player because the player ignores the timing marks. So, while one can hear the audio, the synchronization to the multi-media works on the CD-ROM is lost

It is important to note that the rejection of the claims is based on the prior art teachings of Smith regarding single audio tracks (Fig. 4) and known .wav file formats

(Col. 5 Lines 14-28) and not on the invention of Smith (Fig. 5) who invents a dual-track scheme to accommodate play of audio files on conventional CD players.

It is also important to keep the terminology straight starting with noting the equivalence of the prior art of Smith (Fig. 4) and Appellant's claimed invention (Fig. 5). Both Smith and Appellant depict a single audio file comprising an audio track with embedded timing marks. Pertaining to the terminology used in the claims:

Smith teaches of an audio track 50 (Col. 6 Lines 14-32) equivalent to Appellant's audio stream (Fig. 5).

Smith discloses a plurality of TM (timing) mark ticks 54 and audio data 52 equivalent to Appellants markers 54, 58, etc., and audio sequences 56, 60, etc., (Fig, 5) and Appellant's first and second structures, respectively.

Smith discloses that the TM marks are "references" ("references", Col. 1 Line 39); and relative to known .wav files, the references define "reference timing information" (Col. 6 Line 59)). Appellant defines the markers as references as evidenced by the reference in the table of Fig. 5.

Smith defines the timing tick marks as a reference to other multi-media events stored on the CD-ROM (Col. 1 Lines 35-41). For this to be so, these works are impliedly predetermined events. Appellant defines pre-determined game-related events associated with his markers in the table of Fig. 5.

Smith discloses the association of the marks with stored predetermined works on the CD-ROM which are to run in synch with the audio ("for synchronizing other concurrent elements of the multi-media work with the audio track" (Col. 1 Lines 35-41)

but does not explicitly define the storage as an association table. Appellant discloses an association table (Fig. 5) and also refers to it as a "third structure" in the claims.

Yet, Smith refers to .wav files (Col. 5 Lines 14-28) as known audio formats which employ an association table but again does not explicitly recite an association table structure that associates the marks with other multi-media events stored on the CD-ROM. However, Appellant provides the structure of known Wave files. Appellant refers to and claims .wav files and discloses "This file format refers to audio markers as "cue points" and stores the list of cue points in a block of data known as a 'chuck' (emphasis in original). A specific "cue chuck" is contained in every Wave file and lists the cue points programmed into the audio portion of the file. The cue point creates an identification number for each point and specifies the cue point's location in the audio stream" (Appellant's specification Page 6). Given both Smith and Appellant disclose known Wave files, it is established that these audio formats have the claimed association table.

Smith discloses that in known multi-media work recorded on a CD-ROM, the audio is "streamed" (Col. 1 Lines 29-33). Appellant discloses streamed audio (Fig. 5 "Audio stream"). As the audio is streamed, Smith discloses reading the tick marks preceding each audio data in time (Fig. 4) and via the CPU and synchronous timer 31 (Col. 5 Lines 1-13) of the prior art computer (Col. 4 Lines 44-58), playing the audio data such that "audio tracks are often sequenced with video or other types of data that are played (executed) concurrently" (Col. 1 Lines 28-31). Appellant similarly discloses that

CPU 20 (Fig. 3) "reads" marker #1 and "plays" animation(1) in a "(synchronized)" fashion with "audio(1)" of Fig. 3.

Therefore, in reference to Claims 10, 11, 15, and 16, Smith discloses a prior art method (Fig. 4), comprising:

storing an audio file in a memory structure ("audio data stream recorded on the CD-ROM" (Col. 1 Line 38), the audio file including a first data structure that defines a marker and a second data structure that defines an audio sequence (Fig. 4 comprising known sequences of a plurality of timing (TM) tick marks and a plurality of audio data, wherein the tick marks are references to other multi-media works that play in sync with the audio data (Col. 1 Lines 28-41);

reading the first data structure (Fig. 4 wherein the timing tick marks are read) as the audio data is streaming (Col. 1 Lines 29-32); and

playing the audio sequence from the second data structure (FIG. 4 wherein the audio sequence is streamed (Col. 1 Lines 29-32), including playing the sequence and initiating a multi-media event ("audio tracks are often sequenced with video or other types of data that are played (executed) concurrently" (Col. 1 Lines 28-31) in response to detecting a position in the audio sequence corresponding to the marker ("The conventional or prior art approach used for synchronizing audio data with other data is to insert or embed timing marks into the audio data stream recorded on the CD-ROM. These timing marks serve as references for synchronizing other concurrent elements of the multi-media work with the audio track" (Col. 1 Lines 35-41) wherein the position corresponding to the marker is indicated in Fig. 4), the event being pre-associated with

the marker Smith defines the timing tick marks as a reference to other multi-media events stored on the CD-ROM (Col. 1 Lines 35-41). For this to be so, these works are impliedly predetermined events.)

In reference to Claims 11 and 16, wherein the memory structure further includes referring to an association table (Smith discloses the association of the marks with stored predetermined works on the CD-ROM which are to run in synch with the audio ("for synchronizing other concurrent elements of the multi-media work with the audio track" (Col. 1 Lines 35-41) but does not explicitly define the storage as an association table. Yet, Smith refers to .wav files (Col. 5 Lines 14-28) as known audio formats which employ an association table but again does not explicitly recite an association table structure that associates the marks with other multi-media events stored on the CD-ROM. However, Appellant provides the structure of known Wave files. Appellant refers to and claims .wav files and discloses "This file format refers to audio markers as "cue points" and stores the list of cue points in a block of data known as a 'chuck' (emphasis in original). A specific "cue chuck" is contained in every Wave file and lists the cue points programmed into the audio portion of the file. The cue point creates an identification number for each point and specifies the cue point's location in the audio stream" (Appellant's specification Page 6). Given both Smith and Appellant disclose known Wave files which have association tables and Smith reasonably discloses storing reference marks associated with other media data and works, Examiner believes Smith discloses the claimed association table structure).

In reference to Claim 14, Smith discloses .wav files (Col. 5 Lines 14-28 and Col. 6 Lines 56-59).

In reference to Claim 21, Smith discloses a single audio file (Fig. 4), the audio file including a marker and an audio sequence (Fig. 4); reading the marker identifying a position in the audio sequence at which a multi-media work is to be initiated (Fig. 4 and as the audio is streamed, Smith discloses reading the tick marks preceding each audio data in time (Fig. 4) and via the CPU and synchronous timer 31 (Col. 5 Lines 1-13) of the prior art computer (Col. 4 Lines 44-58); playing the audio sequence (Smith discloses playing the audio data such that "audio tracks are often sequenced with video or other types of data that are played (executed) concurrently" (Col. 1 Lines 28-31); and detecting the position of the marker and initiating the multi-media event corresponding the marker (Fig. 4 wherein "The conventional or prior art approach used for synchronizing audio data with other data is to insert or embed timing marks into the audio data stream recorded on the CD-ROM. These timing marks serve as references for synchronizing other concurrent elements of the multi-media work with the audio track" (Col. 1 Lines 35-41) wherein the position corresponding to the marker is indicated in Fig. 4).

In reference to Claim 22, see rejection of Claim 21. Additionally, relative to the cue point terminology and association table, Smith discloses first structure timing marks (cue points) (Fig. 4), second structure audio sequence data (Fig. 4), and association table third structure (Smith discloses the reference marks are associated with stored

multi-media works and other data on the CD-ROM and as part of the Wave files wherein there is the cue and cue chunk).

However, in reference to Claims 10, 12, 15, 17, 21, and 22, Smith does not explicitly disclose a wagering game, playback of another audio file or activation of a mechanical feature on a wagering machine.

Brossard teaches of a method of wagering on a game machine with audio output (Fig. 4A) and storing audio files in a memory structure ("in order to output or reproduce audio, visual, or audio-visual works which may be, e.g. stored in memory 512" Col. 3 Lines "3-65) such that "in response to a game event such as a win" (Col. 4 Lines 1-5) playback begins "e.g., of a song or other audio or audio visual item is 'won', playback begins, and a pointer 462 is controlled to begin rotating about the center of a generally circular display 464" (Col. 4 Lines 26-31) in order to increase the game entertainment value and thus revenue potential for game operators (Col. 1 Lines 44-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the wagering game method, storage in memory of audio files, and playback of another audio file as taught by Brossard into the teachings of Smith in order to increase the game entertainment value and thus revenue potential for game operators.

2. Claims 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,701,511 to Smith (Smith) of record in view of U.S. Patent No. 6,302,790 to Brossard (Brossard) and further in view of U.S. Patent No. 5,588,096 to Sato et al. (Sato).

Smith, as modified by Brossard, discloses a system substantially equivalent to Appellant's claimed invention. However, Smith fails to teach wherein the event includes an animation sequence involving movements of a character's mouth.

Sato teaches of an event including an animation sequence involving movements of a character's mouth (Fig. 9, 12-17, and 21 and of object display devices of "a person's face which is created and recorded beforehand" Col. 1 Lines 11-13) in order to change the image of an object without performing complicated key operations (Col. 1 Lines 30-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the face object as taught by Sato into the teachings of Smith, as modified by Brossard, in order to change the image of an object without performing complicated key operations.

3. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,701,511 to Smith (Smith) of record in view of U.S. Patent No. 6,302,790 to Brossard (Brossard) and further in view of U.S. Patent No. 5,588,096 to Sato et al. (Sato) and U.S. Patent No. 5,734,923 to Sagawa et al. (Sagawa).

Smith as modified by Brossard and Sato discloses a system substantially equivalent to Appellant's claimed invention. However, Smith as modified by Brossard and Sato is silent on providing closed captioning or sign language presentations.

Sagawa teaches of known systems and methods which display sign-language images in synchronization with characters, pictures or video scenes (Col. 1 Lines 10-45) in order to provide an information guidance system for the hearing impaired.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the known systems and methods to deliver both captioning and sign language as taught by Sagawa into the teachings of Smith as modified by Brossard and Sato in order to provide an information guidance system interface on the gaming machine for the hearing impaired.

7. Claims 10-13, 15-18, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2004/0147300 to Seelig et al. (Seelig) in view of U.S. Patent No. 6,415,303 to Meier et al. (Meier).

Seelig teaches of a gaming method to conduct a wagering game (Fig. 5A) with an animatronic figure and mechanical reels {wagering-game related events} (Fig. 5A-5C "fortune teller" 205 and [0117-0120]) whereby a controller initiates movement of the animatronic figure ("Animated Fig. 205 is managed by control system 30..." [0118]; also "the animated figure could be a sophisticated system having the ability to speak and to make very precise and complex movements" [0073], involving using the mouth (Fig. 12 and [0073]) and wherein "Motor controller 44 may be configured to provide local storage for a variety of different commands that control motors 48a, 48b, and 48c. ... Each motor 48a, 48b, and 48c may control and cause movement in one or more animated elements, such as an arm, finger, leg, or mouth" [0086].

However, Seeling is silent on storing an audio file in a memory structure, the audio file including a first data structure defining a {plurality of} marker{s} {cue points}, a second data structure defining a {plurality of} audio sequence{s}; reading the first data

structure {marker, cue point} and playing the audio sequence{s} from the second data structure, including successively playing the audio sequence{s}, initiating game-related events pre-associated with the respective audio sequence{s} in response to detecting the position among the audio sequences corresponding to each respective markers {cue points} in the first data structure{s}; and wherein a third data structure defines an association table associating the marker{s}{cue points} and the gaming event{s} to be initiated.

Meier teaches of multimedia applications (Col. 1 Lines 52-54) and methods for use with an interactive television systems (Figs. 1 and 2) or personal computers (Col. 3 Lines 19-24), comprising:

storing an audio file in a memory structure, the audio file including a first data structure defining a {plurality of} marker{s} {cue points}, a second data structure defining a {plurality of} audio sequence{s} and a third data structure defining an association table associating the marker{s}{cue points} and the gaming event{s} to be initiated ("The method includes the step of storing at least one composite description in an ASCII text file." (Col. 1 Lines 62-67) wherein a "composite" structure (third data structure association table) (Col. 4 Lines 34-60, Col. 14 Lines 33-44) in memory of Fig. 2 and 4 "asset database", "application database"); and

reading the first data structure {marker, cue point} and playing the audio sequence{s} from the second data structure, including successively playing the audio sequence{s}, initiating game-related events pre-associated with the respective audio sequence{s} in response to detecting the position among the audio sequences

corresponding to each respective markers {cue points} in the first data structure{s} (Meier discloses a controller (Fig. 1 and "controller" 120 (Col. 2 Line 62) operative to access the audio file, read the marker associated with the audio file, and play the audio sequence (Col. 4 Lines 40-55); wherein the audio files are associated with an application ("composite") under the control of the Composite Description Language (CDL) (Col. 4 Lines 11-39) and timer Event Handler (Col. 2 Lines 1-8)).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the multimedia application and methods of Meier into the animated gaming system of Seelig (Seelig, [0003]) in order to increase the excitement and enjoyment experienced by players, attract more players to the game, and encourage them to play longer ([Seelig, 0009]).

9. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2004/0147300 to Seelig et al. (Seelig) in view of U.S. Patent No. 6,415,303 to Meier et al. (Meier) and further in view of U.S. Patent No. 5,734,923 to Sagawa et al. (Sagawa).

Seelig as modified by Meier discloses a system substantially equivalent to Appellant's claimed invention. However, Seelig as modified by Meier is silent on providing closed captioning or sign language presentations.

Sagawa teaches of known systems and methods which display sign-language images in synchronization with characters, pictures or video scenes (Col. 1 Lines 10-45) in order to provide an information guidance system for the hearing impaired.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the known systems and methods to deliver both captioning and sign language as taught by Sagawa into the teachings of Seelig as modified by Meier in order to provide an information guidance system interface on the gaming machine for the hearing impaired.

(10) Response to Argument

10. Appellant's arguments filed 7/23/2009 have been fully considered but they are not persuasive. Appellant argues (see Appellant's Appeal Brief pages 13-14) that the prior art fails to disclose storing an audio file associated with a wagering game in a memory structure, the audio file including a first data structure that defines a marker and a second data structure that defines an audio sequence. Examiner respectfully disagrees and has provided a detailed mapping of the recited limitations to the references and a detailed mapping of the terminology used in the reference and in the recited claims above.

11. Appellant argues (see Appellant's Appeal Brief pages 13-14) that Smith fails to disclose the claimed invention and, in fact, teaches away from embedding tick marks. Examiner respectfully disagrees for at least three reasons:

Examiner is not relying on any of the Smith invention to reject Appellant's claims but rather the Examiner is relying on teachings disclosed as prior art by Smith (see Figs. 1, 2 and 4). Appellant argues the particulars of the invention of Smith juxtaposing Smith's two tracks to Appellant's one track such that Appellant's claimed invention "has

no need to keep track of a second file and do not recite a second stream of data ...". Examiner respectfully disagrees in that the invention of Smith (Fig. 5) is not germane as it is not relied upon in the Examiner's rejection. However, Smith provides valuable prior art teachings (Figs. 1, 2 and 4). Smith discloses known single audio tracks with embedded timing tick marks serving as references to pre-determined multi-media works which execute synchronously with the audio track. No argument has been presented as to how the disclosure of Smith's prior art fails to anticipate or render obvious the claimed invention.

Relatedly, since Examiner is relying on the prior art teachings of Smith, whether he teaches away or not is not relevant.

12. Appellant argues (see Appellant's Appeal Brief pages 14-15) that Smith fails to render obvious the order of the operations as claimed. Examiner respectfully disagrees and has provided a detailed series of steps as disclosed by a careful reading of the Smith reference above. Appellant argues that the tick marks are not read prior to the playing of the audio sequence. Examiner respectfully disagrees for two reasons.

First, Appellant argues limitations which are not claimed in that the claims require the markers to be read prior to the audio file being played. Appellant's claims do not specify this limitation. Appellant claims:

"reading the first data structure;

and playing the audio sequence from the second data structure, including playing the sequence and initiating a wagering game-related event in response to detecting a position in the audio sequence corresponding to the marker" (Claim 10).

Smith discloses that in known multi-media work recorded on a CD-ROM, the audio is "streamed" (Col. 1 Lines 29-33). Likewise, Appellant discloses streamed audio (Fig. 5 "Audio stream"). As the audio is streamed, Smith discloses reading the tick marks preceding each audio data in time (Fig. 4) and via the CPU and synchronous timer 31 (Col. 5 Lines 1-13) of the prior art computer (Col. 4 Lines 44-58), playing the audio data such that "audio tracks are often sequenced with video or other types of data that are played (executed) concurrently" (Col. 1 Lines 28-31). Appellant similarly discloses that CPU 20 (Fig. 3) "reads" marker #1 and "plays" animation(1) in a "(synchronized)" fashion with "audio(1)" of Fig. 3.

A reasonable interpretation of this broad limitation allows for simultaneous or concurrent reading and playing as disclosed by Smith. Additionally, the claim steps are broadly drafted as to be performed in any order. For example, with reference to Claim 10, it is possible to read the marker and play the audio at the same time and then store the file. Thus, as broadly claimed, a specific order is not claimed.

Second, assuming that a sequence as argument by the Appellants' is actually being claimed, examiner has provided an explanation of Smith showing that the tick marks are read then executed in sync with the audio and any other multi-media work ("for synchronizing other concurrent elements of the multi-media work with the audio track" Col. 1 Lines 35-41). Examiner has shown the similarities to the disclosure of Appellant (Fig. 5) (See page 4-6 above) wherein Appellant teaches that the tick marks are read first (Specification pages 6-7) in explaining Figs. 3 and 5 of the claimed invention. Conversely, Appellant has not met his burden of proving why Smith doesn't

read the marks first and/or explaining why reading the marks and playing the audio concurrently does not render obvious the claim as written. Appellant argues that Smith only "detects the marker itself" (see Appellant's Brief page 15). Examiner respectfully disagrees. Smith uses the timing tick marks as references ("references", Col. 1 Line 39) so it is erroneous to state that Smith merely detects the tick marks. Smith uses the marks to trigger other multi-media works and other data to play concurrent with the audio file. The marks are read, the audio sequence is played and the position of the tick mark is detected indicating the sync point for other works, according to Smith.

Thus, Appellant has broadly drafted the claims such that the steps of reading, playing, and detecting the position can happen in any order and even at the same time as disclosed by Smith.

13. Appellants argues (see Appellant's Appeal Brief page 15) that there is no reason to combine Smith and Brossard. Examiner respectfully disagrees and has provided "It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the wagering game method, storage in memory of audio files, and playback of another audio file as taught by Brossard into the teachings of Smith in order to increase the game entertainment value and thus revenue potential for game operators."

14. Appellant argues (see Appellant's Appeal Brief pages 15-16) that a plurality of markers and audio files has not been disclosed in a first data structure by the art of record. Examiner respectfully disagrees and has addressed this issue as part of the rejection of the claims wherein Smith discloses a plurality of markers and audio data

segments in the audio track (Fig. 4). Appellant argues further that "there can not be separate first and second data structures as recited in claim 15" (see Appellant's Brief page 16). Examiner respectfully disagrees in that Appellant argues features which are not claimed. The claims do not require that the data structures are separate just that there be a first and second data structure. Smith has been shown to have the claimed first and second data structures of a marker and audio data (for example, see comparison of Fig. 4 of Smith and Fig. 5 of Appellant).

15. Appellant argues (see Appellant's Appeal Brief pages 16-17) that a) the cue point and association data table associating the cue point to a game-related event is not inherent in that the table may be managed by an external process and b) that the association table is internal to the file as claimed in Claim 22. Examiner respectfully disagrees. Examiner has clarified the rejection of the claims to indicate that Smith discloses .wav files containing, as disclosed by Appellant, known "cue points" and association data tables called "cue chunks". These structures are inherent to Wave files. Thus, the inherency is in reference to the particulars of the disclosed .wav files.

16. Appellant argues (see Appellant's Appeal Brief pages 17-18) that the art of record does not disclose the order of the operations, a lack of motivation to modify Smith and teaching away. Examiner respectfully disagrees and has previously responded to the arguments.

17. Appellant argues (see Appellant's Appeal Brief page 18) that Claims 11 and 16 have not been rejected with specificity. Examiner has reformatted the rejection of

claims to ensure Appellant and the Board that Examiner met his burden of treat all claim limitations with specificity as is due the Appellant.

18. Appellant argues (see Appellant's Appeal Brief pages 18-19) that Meier fails to disclose reading a first data structure that defines a marker and then successively playing the audio sequences and initiating the game-related events in response to detecting the position of the marker. Examiner respectfully disagrees for at least three reasons.

First, Meier discloses that claimed first structure of embedded tick marks in the second claimed structure of the audio file. See rejection of the claims referring to the "composite" structure and which are "multi-media objects (i.e., video, graphic, text, audio, animation, or custom library)" structures (Col. 4 Lines 40-44). Meier also discloses playing the events associated with the marker (Col. 14 Lines 34-44) which correspond to an event type and the stream composite item (Col. 14 Lines 34-44) in response to detecting the marker embedded in the stream by the playback system.

Second, Appellant argues that the claims require the markers to be read prior to the audio file being played but do not claim this limitation. Appellant's claims recite reading the first data structure markers and playing the audio sequence in response to detecting the position in the audio sequence corresponding to the marker. A reasonable interpretation of this broad limitation allows for simultaneous or concurrent reading and playing. Additionally, the claim steps are so broad as to be able to be performed in any order. As broadly claimed, a specific order is not claimed.

Third, Appellant has not met his burden of proving why Meier doesn't read the marks first and/or explaining why reading the marks and playing the audio concurrently does not render obvious the claim as written. Appellant similarly argues, like in Smith, that Meier only "detects the marker itself" (see Appellant's Brief page 20). Examiner respectfully disagrees. Meier uses the embedded markers to trigger composites during the runtime session (Col. 8 Lines 55-61). Thus, the markers are read, the composite references for the works that are played, the position of the marker is detected indicating the sync point for other works, according to Meier. These steps can even occur simultaneously or concurrently. Appellant has broadly drafted the claims such that the steps of reading, playing, and detecting the position can happen in any order and even at the same time as disclosed by Meier

19. Thus, for all the reasons provided above, the rejection of the claims is maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Paul A. D'Agostino/
Examiner, Art Unit 3714

Art Unit: 3714

Conferees:

/Dmitry Suhol/

Supervisory Patent Examiner, Art Unit 3714

/Janet C. Baxter/

TC 3700 TQAS